

SENATE BILL 64 of the First Extraordinary Session
By Clabough

AN ACT to amend Tennessee Code Annotated, Title 48 and Title
67, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-806(a) is amended by inserting the words "limited liability partnerships, limited liability corporations, sole proprietorships, partnerships, any other organization or entity engaged in a for-profit business" between the words and punctuation "corporations," and "cooperatives,".

SECTION 2. Tennessee Code Annotated, Section 67-4-806(a), is further amended by designating the existing language as subdivision (1), and by adding the following language to be designated as subdivision (2):

(2) For purposes of imposing the tax levied by this part and part 9 on sole proprietorships, partnerships or any other organization or entity engaged in a for-profit business, the net earnings of a sole proprietorship shall be taxed as if the sole proprietorship were organized as a corporation.

SECTION 3. Tennessee Code Annotated, Section 67-4-903(a) is amended by inserting the words "limited liability partnerships, limited liability corporations, sole proprietorships, partnerships, any other organization or entity engaged in a for-profit business" between the words and punctuation "corporations," and "cooperatives,".

SECTION 4. Tennessee Code Annotated, Section 67-4-903(a), is amended by deleting the language "in corporate form".

SECTION 5. Tennessee Code Annotated, Section 67-4-812(c), is amended by adding the following language as a new subdivision (3):

(3) In addition to the provisions of subdivision (1) and (2), in order to prevent the evasion of taxes or to clearly reflect income, the commissioner is authorized to collect the tax imposed by this part and part 9 to any business entity organized for-profit regardless of its method of organization if such entity does not have a specific not-for-profit exemption under the Internal Revenue Code or has no specific exemption under this part or part 9.

SECTION 6. Tennessee Code Annotated, Section 67-4-804(a), is amended by adding the following as appropriately designated new items:

() "Affiliated corporation" means a corporation which is a member of a controlled group as that term is defined in Internal Revenue Code 267(f) or any successor thereto.

() "Pass-through entity" means partnerships, limited partnerships, limited liability companies, limited liability partnerships and any other unincorporated association on which the owners include the income, gain and loss of the entity in the owners' federal tax computations.

() "Pass-through entity business" means the activities of the pass-through entity.

() "Percentage Interest" with respect to the tax imposed by part 8 of this chapter shall mean the proportionate interest of the owner in the profits of the pass-through entity. With respect to the tax imposed by part 9 of this chapter, it shall mean the proportionate capital interest of the owner.

SECTION 7. Tennessee Code Annotated, Section 67-4-804(a)(1) is amended by inserting the following at the end thereof:

A corporate owner of a pass-through entity which either participates in the management or control of the pass-through entity directly, or indirectly by virtue of an affiliated corporation so participating, shall be deemed to be engaged in the pass-through

entity unitary business activity. If tiered pass-through entities are involved, the ultimate owners of the tiered pass-through entities shall be deemed to be the owner of the pass-through entity engaged in business in Tennessee.”

SECTION 8. Tennessee Code Annotated, Section 67-4-804(a)(7)(A) and (B) is amended by deleting the subdivisions in their entirety and by appropriately redesignating the subsequent subdivisions.

SECTION 9. Tennessee Code Annotated, Section 67-4-806 is amended by adding the following as an appropriately designated new subsection:

() A corporate owner of a pass-through entity which either participates in the management or control of the pass-through entity directly or indirectly by virtue of an affiliated corporation, shall be deemed to own its percentage interest of the assets owned or leased by the pass-through entity. If tiered pass-through entities are involved, the ultimate owners of the tiered pass-through entities shall be deemed to be the owner of the pass-through entity engaged in business in Tennessee.”

SECTION 10. Tennessee Code Annotated, Title 67, Chapter 8, is amended by adding the following new section to be appropriately designated:

Section 67-8-____.

If one or more affiliated corporations participate in the management or control of the pass-through entity, the pass-through entity unitary business income shall be reported on a combined return by all of the affiliated corporations which are owners of such pass-through entity reflecting their combined percentage interest of the operations of the pass-through entity unless the Commissioner consents to an election by each of the affiliated corporations to the filing of separate returns in Tennessee reflecting such corporation’s percentage interest of the pass-through entity unitary business income.

SECTION 11. Tennessee Code Annotated, Title 67, Chapter 9, is amended by adding the following as a new appropriately designated section:

Section 67-9-____.

If one or more affiliated corporations participate in the management or control of the pass-through entity, each of the affiliated corporations which are owners of such pass-through entity must file combined returns and pay tax on the combined percentage interest of the ownership interest, surplus and undivided profits of the pass-through entity unless the commissioner consents to an election by each of the affiliated corporations to the filing of separate returns in Tennessee reflecting each of the affiliated corporation's percentage interest in the ownership interest, surplus and undivided profits.

SECTION 12. (a) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting in their entirety the following sections in such part:

67-6-301; 67-6-303; 67-6-309; 67-6-329(20) and (21); 67-6-333; 67-6-334; 67-6-343; 67-6-344; 67-6-345; and 67-6-354.

(b) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Section _____. There is exempt from the tax levied by this chapter:

(1) Any sale or use of any article, manufactured of the produce of this State exempt from taxation pursuant to Section 30 of Article II of the Constitution of Tennessee; and

(2) Any sale or use which would otherwise be taxable pursuant to the provisions of this chapter but which would impose a tax which is invalid either under the commerce clause or the due process clause of the Constitution of the United States.

SECTION 13. Tennessee Code Annotated, Section 67-6-102(9), is amended by deleting from the first sentence the language "the retail price of which, for any such single article, exceeds two hundred fifty dollars (\$250)," and by deleting from the fourth sentence the language ", the retail price of which exceeds two hundred fifty dollars (\$250)".

SECTION 14. Tennessee Code Annotated, Section 67-6-102(13)(B), is amended by deleting the language ", the cost of which, for any such single article, exceeds one thousand dollars (\$1,000),"

SECTION 15. Tennessee Code Annotated, Section 67-6-102(24)(F)(v), is amended by deleting the language "and provided further, that notwithstanding any provision of this chapter to the contrary, taxes levied pursuant to this chapter on bathing and grooming of animals shall only be applied to fifteen percent (15%) of the gross charge for such bathing and grooming,".

SECTION 16. Tennessee Code Annotated, Section 67-6-206, is amended by deleting the section in its entirety.

SECTION 17. Tennessee Code Annotated, Section 67-6-207, is amended by deleting the section in its entirety.

SECTION 18. Tennessee Code Annotated, Section 67-6-209(a), is amended by placing a period after the words "deductions whatsoever" and by deleting the remainder of the sentence.

SECTION 19. Tennessee Code Annotated, Section 67-6-216, is amended by deleting the section in its entirety.

SECTION 20. Tennessee Code Annotated, Section 67-6-217, is amended by deleting the section in its entirety.

SECTION 21. Tennessee Code Annotated, Section 67-6-218, is amended by deleting the section in its entirety.

SECTION 22. Tennessee Code Annotated, Section 67-6-224, is amended by deleting the section in its entirety.

SECTION 23. Tennessee Code Annotated, Section 67-6-225(b), is amended by deleting the subsection in its entirety.

SECTION 24. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new, appropriately designated section:

Section_____. (a) There shall be exempt from the state sales tax only imposed by Title 67, Chapter 6, the sale of essential food items.

(b) As used in this section the term "essential food items" means: bread, milk, eggs, baby food, and baby formula.

(c) The department of revenue is authorized to promulgate, in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, such rules as shall be necessary to implement the provisions of this section.

SECTION 25. This act shall take effect July 1, 1999, the public welfare requiring it.